IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/01/2004

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THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM

W.P.No.2456 of 2000

1.Union of India,
rep. By Postmaster General,
Southern Region,
Madurai.

2.Sr. Supdt. Of Post Offices,
Kovilpatti Division,
Kovilpatti,. ..Petitioner

-vs-

1.S.Murugesan

2.The Registrar,
Central Administrative Tribunal,
Chennai Bench. ..Respondents

For Petitioner : Mr.V.Vaithiyalingam

For respondent : Mr.R.Malaichamy

:ORDER

(The order of the Court was made by R.JAYASIMHA BABU, J.)

The Tribunal has invalidated a portion of the Rule prescribed by the Postal Department, which inter alia provides that preference may be given to candidates with matriculation qualification.

2. We have in several other matters, wherein the Tribunal had made similar order, set aside such orders. It is for the employer to determine the qualification which he wishes to prescribe for persons who seek employment under the employer. If the Postal Department felt that persons with matriculation would be better suited, it was certainly open to the Department to prescribe that as the qualification. The fact that it has also allowed persons with VIII standard to apply, in case persons with matriculation qualification are not available, does not mean that the preference of the

matriculation qualification is in any way unlawful.

3. Moreover, it is not for the Tribunal to prescribe the qualification required for different posts. The preference given does not contravene any provision of law nor was it ultra vires the powers of the employer.

4. Learned counsel for the respondent submitted that even if that preference is held to be valid, nevertheless, the respondent should be provided with a position as ED Agent as he has served the Department in that capacity at different periods prior to 1987.

5. The Rules do not provide that persons who had worked earlier, even if they were found not to have the required qualification, or, even when they do not succeed when they compete with others, should be appointed ignoring the qualification possessed by other candidates.

6. Learned counsel for the Central Government submitted that at the instance of the Tribunal, the Department had, as a one time measure, drawn up a list of persons who had served the Department for 240 days or above and that preference was given to such persons while making the appointments and further that that list has been exhausted.

7. We also cannot appreciate persons like the petitioner not making any attempt to improve their own qualifications even when numerous facilities are available by way of open schools which enable persons without formal education to straightaway appear for examinations at different levels and improve their qualifications and thereafter even acquire Degrees and Post Graduate Degrees through the open Universities.

8. When a large pool of persons with higher qualification is readily available, it would be unjust to deprive the employer of the benefit of the service of such better qualified candidates and to compel the employer to dilute it's own efficiency by compelling it to recruit persons with a lesser qualification who may not be in a position to attain the level of efficiency which persons with a higher qualification are able to.

9. The impugned order is, therefore, set aside and the writ petition is allowed.

To
The Registrar,
Central Administrative Tribunal,
Chennai Bench.

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